

**BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
MASSACHUSETTS**

FIBER TECHNOLOGIES NETWORKS, L.L.C.
140 Allens Creek Road
Rochester, NY 14618

Complainant,

v.

**TOWN OF SHREWSBURY ELECTRIC
LIGHT PLANT**
100 Maple Avenue
Shrewsbury, MA 01545-5398

Respondents.

No. _____

AFFIDAVIT OF MARIO R. RODRIGUEZ

I, Mario R. Rodriguez, hereby depose and state the following:

1. I am over the age of 18 years and am competent to testify about the facts recited in this Affidavit. I make this Affidavit based upon my personal knowledge, unless otherwise noted, and in support of Complainant Fiber Technologies Networks, L.L.C.'s Complaint.

2. I am the Director of Governmental Affairs and Facilities Access of Fiber Technology Networks, L.L.C. ("Fibertech") in Rochester, New York, and my duties include the procurement of authorizations from municipalities for the installation of facilities by Fibertech in the public rights-of-way.

3. Fibertech is a New York limited liability company with a principal place of business at 140 Allens Creek Road, Rochester, New York. Fibertech is a telecommunications service provider offering, initially, dark fiber for use by communications carriers (CLECs, ISPs, IXC's, ILECs), educational and governmental institutions, and businesses. As market conditions and economics dictate, Fibertech intends to supplement these offerings with additional services including local exchange voice and data services throughout the service territory of Verizon and long distance services throughout the Commonwealth of Massachusetts. Access to utility poles is essential to allow Fibertech to develop its network.

4. Respondent Town of Shrewsbury Electric Light Plant ("SELP") is an electric light plant with a principal place of business at 100 Maple Avenue, Shrewsbury, Massachusetts. SELP also operates the only cable television system in the Town of Shrewsbury. Upon information and belief, SELP uses its fiber optic plant to offer telephone and Internet access service, as well as leasing dark fiber.

5. SELP controls the poles on which Fibertech seeks to attach its fiber lines.

6. Fibertech has requested access to SELP's poles for the attachment of its fiber lines.

7. Thomas R. Josie was designated by SELP to receive such a request for access.

Fibertech's initial efforts to obtain access to SELP poles are detailed in the Affidavit of Jennifer Starks.

8. On or about May 11, 2001, Fibertech pursued these efforts further by sending to Thomas R. Josie, General Manager of SELP, a letter discussing Fibertech's proposal to SELP for the attachment of fiber lines to SELP's poles. A true copy of Fibertech's May 11, 2001, letter is attached hereto as Exhibit A and incorporated herein by reference.

9. After a phone conversation on May 15, 2001 in which Mr. Josie told me, "we are at where we are," in response to my request for a status update, Fibertech delivered a letter to Mr. Josie on or about May 15, 2001, requesting his response as to whether SELP intended to allow Fibertech to attach its fiber lines to SELP's poles. A true copy of Fibertech's May 15, 2001, letter is attached hereto as Exhibit B and incorporated herein by reference.

10. On May 23, 2001, Mr. Josie and I spoke on the telephone. In that conversation, Mr. Josie stated that SELP would “stand basically on the present proposal to Fibertech” whereby “Shrewsbury will own the cables”.

11. By letter to Mr. Josie dated June 7, 2001, Fibertech formally requested access to SELP’s poles for Fibertech’s communication fiber lines. A true copy of Fibertech’s June 7, 2001, letter is attached hereto as Exhibit C and incorporated herein by reference.

12. By letter dated July 19, 2001, SELP wrongfully denied Fibertech access to its poles. A true copy of SELP’s July 19, 2001, letter is attached hereto as Exhibit D and incorporated herein by reference. SELP’s July 19, 2001, letter denied access to Fibertech on the sole grounds that “Fibertech is not entitled to a grant of location pursuant to G.L. c. 166, §§ 21, 22 and as such, it does not qualify as a licensee pursuant to G.L. c. 166, § 25A.”

13. Despite these efforts over a period of almost one year, SELP and Fibertech have been unable to reach agreement regarding Fibertech’s access to SELP’s poles. In light of the efforts undertaken by the parties to date, and the position of SELP set forth in its July 19, 2001, letter, it is my belief that any further efforts to resolve the issue prior to the filing of this Complaint would have been futile.

14. At no time did SELP assert that SELP’s denial of access was based on reasons of lack of capacity, safety, reliability, or engineering standards. SELP’s denial letter contains no relevant information supporting the denial, nor does it explain how the denial of access relates to any claimed lack of capacity, safety, reliability, engineering standards or other cause.

The undersigned certifies that the foregoing information is true to the best of his information, knowledge, and belief. Thus, the undersigned signs this affidavit on the _____ day of August, 2001, under the penalties of perjury.

Mario R. Rodriguez